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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

C. BROOKS CUTTER,

Plaintiff,

v.

FOOD AND DRUG ADMINISTRATION and  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,

Defendants.

No. 1:09-cv-00107-LJO-DLB

**PARTIES' STIPULATION TO EXTEND  
PROTEST DATE AND RESET STATUS  
CONFERENCE**

Defendants, the United States Food and Drug Administration ("FDA") and Department of Health and Human Services, by and through their attorneys, Benjamin B. Wagner, United States Attorney, and Yoshinori H. T. Himel, Assistant United States Attorney; and Plaintiff, C. Brooks Cutter, respectfully request that this Court modify the schedule set forth in the Court's Order dated January 15, 2010.

In the "Parties' Stipulation to Extend Protest Date, and Reset Status Conference" approved January 15, 2010, the Court agreed to extend the time permitted for the Plaintiff to challenge FDA's withholdings until February 16, 2010. Plaintiff and Defendants now need another eight weeks, that is, until April 13, 2010, to discuss Plaintiff's remaining concerns about the documents and to allow Plaintiff to decide, based on Defendants' response, whether to formally challenge Defendants'

withholdings. Should the decision be not to challenge the withholdings, there would be nothing left to litigate, and the parties should be able to stipulate dismissal.

The parties will not know the case status until April 13, 2010, which is after the status conference set for March 17, 2010, at 9:30 a.m. before Judge Beck. To serve judicial efficiency, the parties request that the status conference be continued until May 19, 2010 at 9:30 am before Judge Beck.

The parties previously agreed that FDA will not prepare a Vaughn index of redacted information at this time. If Plaintiff decides to challenge FDA's withholdings, FDA agrees to produce a Vaughn index within thirty (30) calendar days after Plaintiff gives defense counsel of record and FDA counsel a notice of his intent to challenge the withholdings.

The time period for Plaintiff's deadline to challenge Defendants' withholdings has already been extended a total of one hundred and seventy-five (175) days, from August 25, 2009, to allow the parties to continue their ongoing efforts to reach a mutually agreeable resolution to this matter.

Based upon the foregoing, the parties move this Court to enter an order granting Plaintiff until April 13, 2010, to challenge Defendants' withholdings, consistent with the terms set forth in this stipulation, and to reset the status conference currently scheduled for March 17, 2010 at 9:30 am to May 19, 2010 at 9:30 before Judge Beck.

Dated: February 2, 2010

/s/ C. Brooks Cutter  
C. BROOKS CUTTER

Dated: February 2, 2010

BENJAMIN B. WAGNER  
United States Attorney

By: /s/ Y H T Himel  
YOSHINORI H. T. HIMEL  
Assistant U.S. Attorney

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6 Office of the General Counsel  
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7 Rockville, MD 20857

8  
9  
10 ORDER

11 Good cause appearing, Plaintiff's deadline for challenging Defendant's withholdings is  
12 extended until April 13, 2010. The status conference presently set for 9:30 a.m. on March 17, 2010, is  
13 CONTINUED until 9:30 am on May 19, 2010, before Judge Beck.

14 IT IS SO ORDERED.

15 **Dated: February 19, 2010**

16 **/s/ Dennis L. Beck**  
UNITED STATES MAGISTRATE JUDGE